

## 48A C.J.S. Judges § 241

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### B. Waiver of Disqualification

##### 2. Acts Constituting Waiver

## § 241. Participation in proceedings—Filing of motions or pleadings

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  52, 53

### **The making of motions addressed to the court may be considered a waiver of a claimed disqualification.**

The making of motions addressed to the court may be considered a waiver of a claimed disqualification.<sup>1</sup> For instance, where a defendant's objections, although pretrial, come after the defendant has, without protest, participated in the selection of special judges and has submitted to the jurisdiction of the special judges by obtaining rulings upon the defendant's motions, the defendant acquiesces in any irregularity in the selection of the special judges.<sup>2</sup> Further, participation in an action by the filing of pleadings is a waiver of the right to disqualify the judge.<sup>3</sup>

However, a party does not waive the right to peremptorily disqualify a judge by appearing before a judge to oppose a motion and to make a motion after having filed a notice of change of judge.<sup>4</sup> Also, a party does not waive the right to remove an assigned judge, although the party's counsel may have stated no objection when first notified of the judge's assignment, where the party asserts a statutory right to remove the judge within the appropriate statutory time limits and before submission of any argument or proof at a motion hearing.<sup>5</sup>

### ***Motion for change of venue.***

Depending on the statute under which it is made, a motion for a change of venue does<sup>6</sup> or does not<sup>7</sup> constitute a waiver of a party's right to disqualification of the trial judge.<sup>8</sup>

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Footnotes

- 1 S.D.—[State v. Chamley](#), 1997 SD 107, 568 N.W.2d 607 (S.D. 1997).
- 2 Ind.—[Marts v. State](#), 432 N.E.2d 18 (Ind. 1982).  
  
As to participation in preliminary proceedings as waiver, see § 242.
- 3 Ky.—[Siler v. Proctor Coal Co.](#), 272 Ky. 477, 114 S.W.2d 749 (1938).  
  
**Waiver where party did not seek disqualification until time of argument**  
Cal.—[Reichert v. General Ins. Co. of America](#), 68 Cal. 2d 822, 69 Cal. Rptr. 321, 442 P.2d 377 (1968).
- 4 Alaska—[Staso v. State, Dept. of Transp.](#), 895 P.2d 988 (Alaska 1995).  
  
As to objections to judge and proceedings thereon, see §§ 298 to 334.
- 5 S.D.—[State v. Peterson](#), 531 N.W.2d 581 (S.D. 1995).
- 6 N.M.—[State v. Garcia](#), 1943-NMSC-040, 47 N.M. 319, 142 P.2d 552, 149 A.L.R. 1394 (1943).
- 7 Ind.—[State v. Hancock Superior Court](#), 270 Ind. 221, 383 N.E.2d 1042 (1979).
- 8 Mo.—[State v. Sullivan](#), 486 S.W.2d 474 (Mo. 1972).

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